

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES H. HURST, JR.	:	CIVIL ACTION
	:	
v.	:	
	:	
JIFFY LUBE	:	NO. 00-CV-133

MEMORANDUM

McLaughlin, J.

December 2, 2000

The plaintiff James H. Hurst brought this action against his former employer, Jiffy Lube. Several of his claims were dismissed earlier in the litigation by the Honorable William H. Yohn, Jr. Currently before the Court are cross motions for summary judgment on the two remaining claims: race discrimination under Title VII of the Civil Rights Act of 1964 and defamation. I will grant the defendant's motion and deny the plaintiff's motion.

I. Background

A. Procedural Posture

The plaintiff, James H. Hurst, filed a seven-count complaint against Jiffy Lube on January 12, 2000. The plaintiff subsequently filed two amended complaints. The second amended

complaint, filed on June 8, 2000, contained the following claims: (1) race discrimination in violation of Title VII of the Civil Rights Act of 1964, arising out of an alleged pay discrepancy in 1995; (2) race discrimination in violation of Title VII, arising out of a decision to promote a Caucasian employee, Thomas King, to General Manager in October 1998; (3) fraud in fact; (4) constructive fraud; (5) defamation, arising out of statements made in a position statement submitted to the EEOC; (6) intentional tort; and (7) unjust enrichment.

The Honorable William H. Yohn, Jr. held a status conference with Counsel on August 18, 2000 and subsequently dismissed Counts Three, Four, Five, and Seven in an Order dated August 18 and filed August 23, 2000. The plaintiff was allowed to proceed on the two Title VII claims and the defamation claim. Hurst concedes that his Title VII claim arising out of the alleged pay discrepancy in 1995 is time-barred. The only two claims currently before the Court are his failure to promote claim under Title VII and his defamation claim.

B. Facts

The following facts are undisputed unless otherwise noted. Plaintiff James H. Hurst was hired as a Jiffy Lube employee on October 2, 1993. He worked first as a Courtesy Technician, then

as a Lube Technician, and was then promoted to Customer Service Specialist. The plaintiff claims that between May 1995 and September 1995, he effectively performed the duties of a manager at the Drexel Hill Jiffy Lube store. Both the plaintiff and the defendant agree that Hurst did not have the title of manager during this time. The plaintiff resigned from his employment with Jiffy Lube in September 1995.

On December 12, 1997, plaintiff was rehired by Jiffy Lube as an Assistant General Manager in Cinnaminson, NJ, then transferred to Norristown, NJ. (Def. Ex. C).¹ Plaintiff claims that he managed the Norristown Jiffy Lube store from December 1997 to May 1997. (Affidavit of James Hurst). Both parties agree that Hurst's title during this time was Assistant General Manager. On July 31, 1998 Plaintiff transferred to the Paoli Jiffy Lube Store as an Assistant General Manager. On January 22, 1999, Hurst was promoted to General Manager of the King of Prussia Store. (Def. Ex. J; Def. Ex. D, 32, 50). Hurst has an Associate's Degree in Management (A.A.S.) from Community College of Philadelphia, for which he completed 73 credits. (Pl. Ex. E).

The plaintiff's failure to promote claim is based on Jiffy

¹ All cites to exhibits refer to the exhibits to the defendant's motion for summary judgment or to the exhibits to the plaintiff's response to the defendant's motion for summary judgment, unless otherwise specified.

Lube's decision to promote another employee, Thomas King, to be General Manager of the Paoli Store in October 1998. Thomas King was first hired by Jiffy Lube on May 19, 1994 as a Lube Technician in Pine Brook, NJ. In May 1996, King was promoted to the position of Customer Service Specialist. In August 1996, King began attending college full-time at West Chester University. King continued to work for Jiffy Lube and was transferred to the Paoli Store as a Customer Service Specialist. In May 1997, King was given a temporary assignment as acting General Manager in Roselle, NJ for approximately one month. In November 1997, King was promoted to the position of Assistant General Manager of the Paoli Store. (Def. Ex. K). According to the undisputed facts, King's promotion to Assistant General Manager in Paoli occurred one month before Hurst was first given the title of Assistant General Manager and seven months before Hurst was transferred to the Paoli store.

After Hurst transferred to the Paoli store in July 1998, Hurst and King both worked as Assistant General Managers in that store. In September 1998, the position of General Manager in Paoli became vacant. In the first month after the position became vacant, no replacement was appointed, and both King and Hurst had the opportunity to run the store's daily business during this time. (Def. Ex. J). King was offered the General

Manager position in October 1998. He started working as General Manager in Paoli on October 31, 1998. As of October, 1998, King had been in college and working toward a Bachelor's Degree for over two years and had accumulated 55 credits. (Def. Ex. H)

In January 1999, approximately three months after King's promotion to General Manager in Paoli, Hurst was promoted to General Manager of the Jiffy Lube store in King of Prussia. (Def. Ex. D, 50). On February 11, 1999, the Jiffy Lube Hotline in Houston, Texas received two separate telephone complaints from two of Hurst's subordinates at the King of Prussia store, alleging violations of Jiffy Lube policy as well as discrimination. (Def. Ex. K; Def. Ex. L; Def. Ex. M). After investigation of these complaints, the Jiffy Lube Regional Manager, John Jones, issued a Final Warning, stating that "any future violation of company policy will result in termination of your employment with Jiffy Lube International." (Def. Ex. N). Three days after acknowledging receipt of the warning, Hurst engaged in a physical fight with another Jiffy Lube employee in front of Jiffy Lube customers. Both Hurst and the other employee were suspended for three days pending an investigation into the fight. As a result of this investigation, Jiffy Lube concluded that both Hurst and the other employee had violated company policy, and Jiffy Lube terminated their employment. (Pl. Ex. R).

Hurst has not raised any claims with regard to his termination.

II. Legal Standard for Summary Judgment

A motion for summary judgment shall be granted where all of the evidence demonstrates "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. Pro. 56(c). The moving party has the initial burden of demonstrating that no genuine issue of material fact exists. Once the moving party has satisfied this requirement, the non-moving party must present evidence that there is a genuine issue of material fact. The non-moving party may not simply rest on the pleadings, but must go beyond the pleadings in presenting evidence of a dispute of fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323-324 (1986). In deciding a motion for summary judgment, the Court must view the facts in the light most favorable to the non-moving party. Josey v. John R. Hollingsworth Corp., 996 F.2d 632, 637 (3rd Cir. 1993).

III. Summary Judgment under Title VII

The decision whether to grant or deny summary judgment in an employment discrimination action under Title VII is governed by the Supreme Court's burden-shifting analysis in McDonnell-Douglas v. Green, 411 U.S. 792 (1973), recently clarified in Reeves v.

Sanderson Plumbing Products, 120 S.Ct. 2097 (2000). Under this analysis, the plaintiff must first make out a prima facie case of discrimination. If the plaintiff does so, the defendant must present a legitimate, non-discriminatory reason for the employment decision. Because the ultimate burden must always rest with the plaintiff, the defendant is not required to show by a preponderance of the evidence that he was, in fact, motivated by this particular reason. Rather, the defendant must merely present a plausible, legitimate, non-discriminatory reason for the action.

In order to survive summary judgment, the plaintiff must then show that the reason presented by the defendant is pretextual either by showing that the defendant's reason is "unworthy of credence", Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981), or by showing that the real motivation was more likely than not discriminatory. Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994); Reeves, 120 S.Ct. at 2108.

IV. Discussion of Defendant's Motion for Summary Judgment

A. Plaintiff's Remaining Title VII Claim

The only remaining Title VII claim is plaintiff's claim that Jiffy Lube discriminated against him on the basis of race when it

chose to promote Thomas King, rather than the plaintiff, to the General Manager position in Paoli.

The defendant has assumed for the purposes of its motion that plaintiff established a prima facie case of discrimination. Jiffy Lube gave the following reasons for promoting Thomas King rather than James Hurst to be General Manager of the Paoli Store in October 1998.

(1) King had worked at Jiffy Lube continuously for four and a half years and had a seniority date of May 19, 1994. Hurst had a seniority date of December 12, 1997, because he had interrupted his employment with Jiffy Lube.

(2) King had served at the Paoli Store for two years, one as a Customer Service Specialist and one as an Assistant General Manager. He was therefore familiar with the Store's employees, customers, policies, and practices. Hurst had transferred to the Paoli Store only two months before the promotion decision.

(3) King's supervisors believed he had better interpersonal skills than Hurst and was able to relate more easily to both customers and other employees. (Def. Ex. I, Def. Ex. J)

(4) King had worked at a "million dollar store", i.e. a store with annual sales in excess of one million dollars. Hurst had never worked at a million dollar store.

(5) King had worked as Acting General Manager in Roselle, NJ in May 1997. Hurst had never held a General Manager position prior to his January 1999 promotion.

(6) John W. King,² who was at that time the Regional Manager of the Philadelphia Region and who supervised both King and Hurst, felt that King had taken greater initiative than Hurst in running the Paoli store in the absence of a General Manager between the September 1998 vacancy and the October 1998 appointment decision and that the store was more productive and profitable on the days King took charge than on the days when Hurst took charge. (Def. Ex. J).

All of the above reasons, if true, are legitimate, non-discriminatory grounds for the decision to promote King rather than Hurst. The burden then shifts back to Hurst to provide evidence that Jiffy Lube's reasons were a pretext for discrimination:

² John W. King is not related to Thomas King.

To discredit the employer's proffered reason, however, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could rationally find them 'unworthy of credence'.

Fuentes, 32 F.3d at 765.

Hurst alleges that Jiffy Lube's proffered reasons are inconsistent and implausible for the following two reasons: First, Hurst claims that he was more qualified than King. Second, Hurst claims that seniority is not a criterion mentioned in any of Jiffy Lube's hand-books and that the defendant's reliance on this criterion is therefore implausible. I will address each argument in turn.

Hurst claims that he was more qualified than King at the time of the promotion, because he had 18 more college credits and 9 more months of managerial experience with Jiffy Lube than King.

The fact that King was promoted despite having fewer college credits is not an inconsistency that renders Jiffy Lube's reasons unworthy of credence. Hurst had received an Associate's Degree, whereas King was pursuing a Bachelor's degree. Both Hurst and King had spent approximately two years studying at the time of

the promotion decision. Any difference in education is not sufficiently striking to allow for an inference of discrimination. "[T]he disparities in qualifications must be of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question." Deines v. Texas Department of Protective and Regulatory Services, 164 F.3d 277, 280-1 (5th Cir. 1999).

Hurst claims that he had 9 more months of managerial experience than King. Hurst has submitted three affidavits, one from himself and two from other former Jiffy Lube employees, in support of this claim.³ The latter two affidavits state that Hurst was promoted to store manager during his time at the Drexel Hill store. (Affidavits of Reginald Taylor and Gilbert Waters).⁴ If the affidavits are meant to suggest that Hurst held the position of General Manager at Drexel Hill, then they are

³ All three affidavits were submitted well after the deadline for submission of summary judgment motions. Given the fact that the plaintiff is representing himself, the court has been very understanding of such delays, although the late submission of affidavits could have prejudiced the defendant. Nonetheless, I do not believe that the substance of these affidavits changes the analysis of Hurst's claims and have therefore not hesitated to consider them as though they had been submitted in a timely fashion.

⁴ The two affidavits from Hurst's fellow employees make no mention of his alleged managerial role in Norristown from December 1997 to May 1998.

directly contradicted by the evidence in the record.⁵ If the affidavits are, on the other hand, meant to suggest that Hurst performed the duties of a store manager, despite not having the title of manager, then they do not contradict the defendant's statement that King was promoted before Hurst in part because he had worked as an official acting General Manager, whereas Hurst had not.⁶ In any case, the affidavits are not sufficient to show pretext.

The defendant has stated that King was chosen for promotion on the basis of a number of his qualifications, including longer uninterrupted employment at Jiffy Lube, longer tenure at the Paoli store and, consequently, a greater familiarity with the customer base and the policies of that particular store, as well as better interpersonal skills. Viewing all the facts and drawing all reasonable inferences therefrom in favor of the plaintiff, Hurst has not provided any evidence indicating that the defendant's reasons were "so plainly wrong that [they] cannot have been the employer's real reason[s]." Keller v. ORIX Credit

⁵ Hurst concedes that he did not have the official title of manager during his time at the Drexel Hill store. (Def. Ex. D, p. 32; Pl. Ex. C).

⁶ Hurst has also not produced evidence to show that King's responsibilities as official Acting General Manager were the same as Hurst's responsibilities during the time he allegedly performed managerial functions. Without providing such evidence, Hurst has failed to cast doubt on the defendant's claim that they promoted King in part because he had the experience of working as a General Manager, albeit for a short time, whereas Hurst had not.

Alliance, Inc., 130 F.3d 1101, 1109 (3d Cir. 1997)(in banc). He has simply stated that his employers should instead have relied on his education and experience, i.e. his additional 18 college credits and 9 months of managerial experience, as selection criteria. Hurst cannot succeed by arguing that Jiffy Lube's decision was mistaken, Fuentes, 32 F.3d at 765, or that Jiffy Lube should have relied on promotion criteria different from the ones Jiffy Lube chose. Simpson v. Kay Jewelers, 142 F.3d 639, 648 (1998). The question is not whether the employer is wise or shrewd or has chosen the best selection method or the best candidate, but whether the employer has discriminated against the plaintiff.

Second, Hurst claims that seniority is not mentioned as a factor in determining promotions in any of Jiffy Lube's hand books or manuals.⁷ This claim is also not sufficient to establish pretext. Seniority is certainly not an illegitimate reason for promotion. The mere fact that it is not explicitly mentioned as a method for determining promotions in any manuals does not make its use as one factor of many implausible. In order to show such implausibility, Hurst would have to, at the

⁷ Hurst does not claim that the seniority dates for King and Hurst given by Jiffy Lube are inaccurate. While Hurst's employment with Jiffy Lube did commence at an earlier date than King's, Hurst interrupted his employment, whereas King did not. We will not second guess Jiffy Lube's method for calculating seniority dates and will accept Jiffy Lube's claims that King had greater seniority according to this method.

very least, present evidence that Jiffy Lube's manuals contained guidelines for promotion decisions that are inconsistent with the use of seniority as a factor in promotion decisions or other evidence to suggest that Jiffy Lube did not actually rely on this criterion. "[T]he plaintiff must point to evidence from which a factfinder could reasonably infer that the plaintiff satisfied the criterion identified by the employer or that the employer did not actually rely upon the stated criterion." Simpson, 142 F.3d at 647. Plaintiff has presented no such evidence. I grant defendant's motion for summary judgment on Hurst's Title VII failure to promote claim.

B. Plaintiff's Defamation Claim

Plaintiff also claims that statements made by the defendant in the course of EEOC proceedings amounted to defamation. Defendant claims that statements made in this context are protected by an absolute judicial privilege.

The privileged nature of statements made in preparation of or during litigation has been recognized in the Restatement (Second) of Torts:

An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceedings in which he participates as

counsel, if it has some relation to the proceeding.

Restatement (Second of Torts), § 586. The Pennsylvania Supreme Court has adopted this notion of an absolute judicial privilege. In Post v. Mendel, 507 A.2d 351 (Pa. 1986), the Pennsylvania Supreme Court stated: "... the privilege exists because there is a realm of communication essential to the exploration of legal claims that would be hindered were there not the protection afforded by the privilege." Id. at 355. The Court further stated that "the protected realm has traditionally been regarded as composed only of those communications which are issued in the regular course of judicial proceedings and which are pertinent and material to the redress or relief sought... With respect to communications made prior to the institution of proceedings, the protected communication would need to have been pertinent and material and would need to have been issued in the regular course of preparing for contemplated proceedings." Id. at 356.

The privilege has generally been extended to statements made during quasi-judicial proceedings, such as EEOC proceedings, because such proceedings are initiated in the regular course of preparing for contemplated proceedings in the employment discrimination context. In Giusto v. Ashland Chemical Company, 994 F.Supp. 587 (E.D. Pa. 1998), the court applied the absolute judicial privilege to statements made in a quasi-judicial

proceeding commenced by the plaintiff before the Pennsylvania Human Relations Commission. See also Hinds v. Magna Fabrics, 1997 WL 309378 (S.D.N.Y., June 9, 1997); Meyers v. Amerada Hess Corporation, 647 F. Supp. 62 (S.D.N.Y. 1986). Given the important role of EEOC proceedings in all employment discrimination cases, statements made by those involved in the proceedings should be protected by an absolute privilege so as to encourage open and thorough communication in these proceedings. Jiffy Lube's statements to the EEOC regarding Hurst's managerial abilities were relevant and material to the legal proceedings and are privileged. I grant the defendant's motion for summary judgment on the defamation claim.

V. Discussion of Plaintiff's Motion for Summary Judgment

The plaintiff has also filed a motion for summary judgment. In his motion, plaintiff raises claims of employment discrimination, fraud, and defamation. All claims relating to fraud as well as several other original claims were dismissed by Judge Yohn in an Order filed on August 23, 2000, leaving only the Title VII claim for pay discrimination in 1995, the Title VII failure to promote claim, and the defamation claim. As I have discussed, the plaintiff has conceded that the Title VII claim for pay discrimination in 1995 is time-barred.

With regard to the two remaining claims, the arguments presented by the plaintiff in his motion for summary judgment and by both parties in their subsequent responses and replies, are the same as the arguments already discussed above. The only additional allegation raised by Hurst is that he was paid less than King in 1997 and 1998. Hurst did not raise this as part of his Title VII claim in his amended complaint of June 8, 2000. While the plaintiff cannot raise this allegation of pay discrimination as a claim at this point in the proceedings, he can use it as evidence to support his failure to promote claim. A plaintiff may use evidence "that the employer previously discriminated against [the plaintiff]" to show that discrimination was more likely than not a cause for the employer's actions. Simpson, 142 F.3d at 645.

In this case, however, Hurst has provided evidence that there was a pay differential, but not that there was discrimination. As the defendant explained in its response to Hurst's EEOC complaint, attached as an Exhibit to plaintiff's motion for summary judgment, the pay differential was based on differing levels of bonus compensation between the two employees and was not discriminatory. Hurst has produced no evidence to contradict the defendant's explanation of the pay differential.

For all of the above reasons, Defendant Jiffy Lube's motion for summary judgment is granted and Plaintiff James Hurst's motion for summary judgment is denied.

An Order follows.